WEE KA SIONG

v.

CHONG CHAI HUAT

HIGH COURT MALAYA, JOHOR BAHRU
AZAHAR MOHAMED J
[CIVIL SUIT NO: 22-567-2008]
10 OCTOBER 2008

CIVIL PROCEDURE: *Injunction - Application for - Restraining defendant from publishing defamatory remarks which may disparage plaintiff's reputation - Whether claim disclosed bona fide serious issues - Whether impugned statements defamatory - Importance of leaving free speech unfettered balanced against reputation of plaintiff - Whether plaintiff bound to suffer irreversible damages - Whether injunction sought for allowed*

The plaintiff filed a certificate of urgency and an *ex parte* summons in chambers (encl. 4) praying, *inter alia*, for the following orders: (i) an injunction to restrain the defendant from publishing defamatory remarks against the plaintiff which may disparage the reputation of the plaintiff amongst general members of the public, until after the trial of this action; (ii) an injunction to restrain the defendant from publishing the statement sent on 22 July 2008 by short messaging service which read 'To whom it may concern: countdown 90 days Dr Wee Ka Siong will resign from all the posts by 20 October 2008 just as Dr Chua. From: Chong Chai Huat, Founder and Chief Executive, TSC Education Group,' or arising from or in connection with the said text message, until after the trial of this action. The plaintiff was the Deputy Minister of Education and a Member of Parliament. It was the plaintiff's case that the name 'Dr Chua' appearing in the text message referred to Dr Chua Soi Lek, the former Minister of Health who had earlier resigned from all his governmental and political posts due to his alleged involvement in a video sex scandal. In the said text message, the plaintiff was personally named therein and it was the plaintiff's contention, by innuendo suggested therein that the plaintiff, just as the said Dr Chua Soi Lek, will resign from all posts due to a sex video scandal. The plaintiff said that the allegation that he had been involved in any sex scandal or that he had committed any immoral act was wholly untrue. According to

A the plaintiff, the defendant had published the said text message knowing and intending that the said text message would be circulated to other persons. The said text message was in fact re-published in a number of local newspapers. The plaintiff alleged that the defendant had admitted to being the author of the said
B text message and that according to an article reported in 'The Star Online', announced that he would be giving a statement to the media on 16 August 2008 and based on the said article, the plaintiff had reason to believe that the defendant would, unless restrained, be publishing, circulating and/or repeating to the media
C and/or general members of the public, defamatory statements about him arising or in connection with the said text message. Against such a backdrop, the plaintiff applied to this court for an interlocutory injunction, without which, by the time the matter proceeded to trial, the damage to the plaintiff's reputation would
D be catastrophic and irreparable damage would be caused which could not be compensated by an award of damages. In opposing the plaintiff's application, the defendant *inter alia* submitted that all these accusations from the plaintiff were without any basis. The defendant stressed that the said text message did not explicitly in
E any way refer to a sex video scandal and that it was beyond his control if the plaintiff should link the said text message to the sex video which involved Dr Chua. To conclude, the defendant said there was no valid ground for the plaintiff to apply for the injunction.

F

Held (granting *inter parties* interim injunction sought for by plaintiff):

(1) The general principle of law is that for one to be entitled to
G an interlocutory injunction the plaintiff must satisfy the court that his claim disclosed a *bona fide* serious issue to be tried and that the balance of convenience favours the grant of the injunction. (para 13)

(2) The plaintiff had shown that the impugned statements in the
H said text message were defamatory. The plaintiff had also shown that the innuendo of the said text message meant and understood to mean that the plaintiff had committed an immoral, unethical and indecent act and that the plaintiff had committed adultery. It was in the public domain that Dr Chua
I Soi Lek the former Minister of Health had on or about

January 2008 resigned from all his governmental and political posts due to his alleged involvement in a sex video scandal. The defendant had admitted to being the author of the said text message. The defendant had not specifically pleaded justification. (para 15)

(3) The court must be slow in granting interim injunction in a defamation action because of the importance of leaving free speech unfettered. But it has to be balanced against the reputation of the plaintiff. The plaintiff was the Deputy Minister of Education and a Member of Parliament and most importantly is married with two children. Having regard to the factual situation of the case, in the event the defendant was not restrained the defendant would make further disparaging remarks and the plaintiff was bound to suffer irreversible and irreparable damage, which could not be compensated by an award of damages. (para 15)

(4) The plaintiff asserted that it was completely and utterly untrue to state or to suggest that he had been involved or had participated in any sex video or scandal and had committed any immoral, unethical and indecent act. There was no proof to indicate that the plaintiff's assertion was untruthful. The plaintiff had also given an undertaking as to damages in case the court should hereafter be of the opinion that the defendant had sustained by reason of the injunction any damages for which the plaintiff ought to pay the defendant. There was no evidence to suggest that the plaintiff was not in a financial position to meet his undertaking should the defendant succeed at the full trial. (paras 15 & 16)

Case(s) referred to:

American Cyanamid v. Ethicon Ltd [1975] AC 396 ***(refd)***

Keet Gerald Francis Noel John v. Mohd Noor Abdullah [1995] 1 CLJ 293 CA ***(refd)***

Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor [1997] 1 CLJ 529 FC ***(refd)***

The New Straits Time Press (M) Bhd v. Air Asia Bhd [1987] 1 MLJ 37 ***(refd)***

For the plaintiff - CH Ng; M/s SC & Partners

Reported by Suhainah Wahiduddin

A

JUDGMENT

Azahar Mohamed J:

[1] On 15 August 2008, the plaintiff filed a certificate of urgency and an *ex parte* summons in chambers (encl. 4) praying, *inter alia*, for the following orders:

B

1. An injunction to restrain the defendant, his servants, agents or any of them or whomsoever from publishing or permitting or causing to be published defamatory remarks or which can be construed as defamatory remarks against the plaintiff which shall or may disparage the reputation of the plaintiff amongst general members of the public, until after the trial of this action or until further order;

C

2. An injunction to restrain the defendant, his servants, agents or any of them or whomsoever from publishing or causing to be published or continuing to publish the statement sent on or about 22/7/2008 by short messaging service which read as 'To whom it may concern: countdown 90 days, Dr. Wee Ka Siong will resign from all the posts by 20/10/2008 just as Dr. Chua. From: Chong Chai Huat, Founder & Chief Executive, TSC Education Group, 22/7/2008.' or arising from or in connection with the said text message, until after the trial of this action or until further order;

D

E

3. The *inter parties* hearing of the injunction application to be heard within twenty one (21) days from the date of this court order.

F

[2] I heard the *ex parte* application (encl. 4) on the same day, that is to say on 15 August 2008 and granted prayers (1), (2) and (3). I then fixed the *inter parties* hearing for the injunction application (encl. 4) on 4 September 2008.

G

[3] The grounds for the plaintiff's application in encl. 4 are as stated in his supporting affidavits. The plaintiff is the Deputy Minister of Education and a Member of Parliament. The plaintiff is married with two children. According to the plaintiff on or about 22 July 2008, the defendant and/or his agent and/or his servant had sent by short messaging service a text message. In it the following was written:

H

I

To whom it may concern: countdown 90 days. Dr. Wee Ka Siong will resign from all the post by 20/10/2008 just as Dr. Chua. From: Chong Chai Huat, Founder and Chief Executive, TSC Education Group 22/7/2008 (the said text message).

[4] It is the plaintiff's case that the name 'Dr. Chua' appearing in the said text message refers to Dr. Chua Soi Lek, the former Minister of Health who on or about early January 2008 resigned from all his governmental and political posts due to his alleged involvement in a sex video scandal.

[5] In the said text message, the plaintiff is personally named therein and it is the plaintiff's contention, by innuendo suggested therein that the plaintiff, just as Dr. Chua Soi Lek did, will resign from all posts due to a sex video scandal. The plaintiff said that the allegation that he had been involved or had participated in any sex video or scandal and/or that he had committed any immoral, unethical and/or indecent act is wholly untrue.

[6] The said text message was sent to *inter alia*, YB Mok Chek Hou, Mr. Benny Lee Chern Han of the; Oriental Daily and other persons unknown to the plaintiff. According to the plaintiff the defendant had published the said text message knowing and intending that the said text message or the gist of it would be circulated to other persons and/or re-published by the media and/or he had authorized their repetition. The said text message was in fact re-published in a number of local newspapers *inter alia*, The New Straits Times, The Star, Berita Harian, Utusan Malaysia, China Press, Nanyang Siang Pau, Guang Ming Daily, Kwong Wan Yit Poh, Sin Chew Jit Poh and Oriental Daily News.

[7] The plaintiff alleged that the defendant has admitted to being the author of the said text message and to have sent it. The defendant has, according to an article reported in The Star Online' on 2 August 2008, announced that he shall be giving 'a statement to the media on 16/8/2008 in Kuala Lumpur' and based on the said article, the plaintiff has reason to believe that the defendant will, unless restrained, be publishing, circulating and/or repeating to the media and/or general members of the public, defamatory statements about him or making a statement arising or in connection with the said text message and/or similar false statements as to his character or conduct.

[8] It is the contention of the plaintiff that the innuendo meaning of the said text message meant and was understood to mean that the plaintiff has been involved or have participated in any sex video or scandal and/or that the plaintiff has committed any immoral, unethical and/or indecent act and also that the plaintiff was unfaithful and/or immoral, alleged to be unfaithful and/or immoral and/or that the plaintiff has committed adultery.

[9] Even though a letter issued by the plaintiff's solicitors to the defendant demanding *inter alia* that the defendant provide an undertaking not to repeat the allegations or make similar allegations against him, to date, the defendant has not given any undertaking and/or replied to the said letter.

[10] Against such a backdrop, the plaintiff as a final point said that unless restrained, the defendant threatens and intends to continue to repeat the defamatory remark an/or make other similar remarks against him and that he has no other alternative but to apply to this court for an interlocutory injunction without which, by the time the matter proceeds to trial, the damage, actual and/or potential, to the plaintiff's reputation would be catastrophic and irreparable damage would be caused which damage cannot be compensated by an award of damages.

[11] In opposing the plaintiff's application, the defendant in his affidavit (encl. 17) *inter alia* said as follows. The said text message did not mention a sex video scandal. He had no intention or would even know that the said text message would be circulated to other persons and/or be re-published by the media. The defendant said he did not authorize their repetition. According to the defendant all these accusations from the plaintiff were without any basis. The defendant stressed that the said text message did not explicitly and/or had in any way refer to a sex video scandal. The defendant said it was beyond his control if the plaintiff should link the said text message to the sex video which involved Dr. Chua. To conclude, the defendant said that there was no valid ground for the plaintiff to apply for the injunction.

[12] In relation to the defendant's affidavit, one very important fact requires to be kept in mind. It is evident that the defendant in his affidavit did not deny the fact that he was the author of the said text message, and that's why he must be taken to have admitted it. The authority to support this proposition is to be found in the case of *Sunrise Sdn. Bhd. v. First Profile (M) Sdn. Bhd. & Anor* [1997] 1 CLJ 529.

[13] I should mention here that the general principle of law is that to entitle to an interlocutory injunction the plaintiff must satisfy the court that his claim disclosed a *bona fide* serious issue to be tried and that the balance of convenience favours the grant of the injunction (see: *Keet Gerald Francis Noel John v. Mohd. Noor b. Abdullah* [1995] 1 CLJ 293 and *American Cyanamid v. Ethicon Ltd.* [1975] AC 396).

[14] However, different principles apply to the grant of an interlocutory injunction in defamation cases. The authoritative statement of the law on this subject matter is to be found in the judgment of Abdul Hamid Ag. LP (as His Lordship then was) in *The New Straits Time Press (M) Bhd. v. Air Asia Bhd.* [1987] 1 MLJ 37. There, His Lordship had this to say at p 38:

> Authorities do also show that the principle that there shall be no interim injunction if defence is raised 'applies not only to the defence of justification' *(Bonnard v. Ferryman)*, 'but also to the defence of privilege' *(Quarts Hill Consolidated Gold Mining v. Beall)*, and 'fair commend' *(Fraser v. Evans & Ors)* 'In accordance with the long established practice in defamation action, the principles enunciated by the House of Lords in *American Cyanamid v. Ethicon Ltd.* Relating to interim injunctions are no applicable in action for defamation. *(Herbag v. Pressdram Ltd.)*
>
> In our judgment the learned judge had erred in law then he exercised the power to grant interlocutory injunction contrary to the established principle governing the issue of interim injunctions in libel actions. He should not therefore have granted the interim injunction against a defendant who has specifically pleaded justification and had raised as a defence fair comment on a matter of public interest.
>
> The principle has clearly emerged by reason of the fact that the questions of libel or no libel are eminently matters to be decided on facts at the trial and there is also the question of the proper meaning to be assigned to the words used in a particular statement. To restrain a defendant before the questions are determined would amount to fettering with free speech. Indeed it is because of the importance of leaving free speech unfettered that the Court must be slow in issuing interim injunction in a libel action.

A In applying these principles, value is placed by the Court upon the freedom of speech which is related to the freedom of the press when balancing it against the reputation of a single individual who, if wronged, can be adequately compensated in damages. The court should act cautiously in granting interim injunction to restrain
B publication of an alleged defamatory statement. In fact it should not grant the injunction where the defendant says he is going to justify it at the trial of the action except where the statement is obviously untruthful or where the Plaintiff has satisfied the Court that the defence will fail. That was made clear by Denning M.R. in *Harakas v. Baltic Exchange.*

C

[15] Applying the foregoing principles and based on the facts as presented before me, I allowed the plaintiff's application for the following reasons:

D 1. The plaintiff has shown that the impugned statements in the said text message were defamatory.

2. The plaintiff has shown that the innuendo of the said text message meant and understood to mean that the plaintiff had committed an immoral, unethical and indecent act and that the
E plaintiff has committed adultery. It is in the public domain that Dr. Chua Soi Lek, the former Minister of Health had on or about early January 2008 resigned from all his governmental and political posts due to his alleged involvement in a sex video scandal.

F 3. The defendant has admitted to being the author of the said text message.

4. The defendant has not specifically pleaded justification and has raised as a defence fair comment on a matter of public
G interest.

5. As stated earlier the court must tie slow in granting interim injunction in defamation action because of the importance of leaving free speech unfettered. But I have to balance it against
H the reputation of the plaintiff. The plaintiff is the Deputy Minister of Education and a Member of Parliament and most importantly is married with two children. In my view having regard to the factual situation in the present case, in the event the defendant is not restrained the defendant will make
I further disparaging remarks and the plaintiff is bound to suffer irreversible and irreparable damage, which cannot be compensated by an award of damages.

6. The plaintiff asserted that it is completely and utterly untrue to state or to suggest that the had been involved or had participated in any sex video or scandal and had committed any immoral, unethical and indecent act. There is no proof to indicate that the plaintiff's assertion is untruthful.

7. The plaintiff has given an undertaking as to damages in case the court should hereafter be of the opinion that the defendant has sustained by reason of the injunction any damages for which the plaintiff ought to pay the defendant. There is no evidence to suggest that the plaintiff is not in financial position to meet his undertaking should the defendant succeed at the full trial.

[16] Therefore, based on all the aforesaid reasons, I granted the *inter parties* interim injunction sought for by the plaintiff and I accordingly made an order in terms of encl. 4, paras (a), (b) and (d).